



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 160229159-7990-01]**

**RIN 0648-BF85**

**Fisheries of the Northeastern United States; Framework 2 to the Tilefish Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 2 to the Tilefish Fishery Management Plan. Framework Adjustment 2 was developed by the Mid-Atlantic Fishery Management Council to improve and simplify the administration of the golden tilefish fishery. These changes include removing an outdated reporting requirement, proscribing allowed gear for the recreational fishery, modifying the commercial incidental possession limit, requiring commercial golden tilefish be landed with the head and fins attached, and revising how assumed discards are accounted for when setting harvest limits.

**DATES:** Comments must be received on or before [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2016-0024, by either of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-

Rulemaking Portal. Go to [www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0024](http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0024), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Tilefish Framework 2.”

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted to [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

Copies of Framework 2, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA/RIR is also accessible via the Internet at: [www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, 978-281-9341, Douglas.Potts@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

This action proposes regulations to implement Framework Adjustment 2 to the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this framework to improve and simplify management measures for the golden tilefish fishery in Federal waters north of the Virginia/North Carolina border, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The proposed management measures contained in Framework 2 are summarized below, with additional information and analysis are provided in the EA (see **ADDRESSES**).

The Council's original FMP for the golden tilefish fishery became effective in 2001 (66 FR 49136; September 26, 2001). The FMP established Total Allowable Landings (TAL) as the primary control on fishing mortality, and implemented a limited entry program with a tiered commercial quota allocation of the TAL. Amendment 1 to the FMP replaced the previous management system with an individual fishing quota (IFQ) system that allocated the TAL to individual quota shareholders rather than different permit categories (74 FR 42580; August 24, 2009). The Council developed this action to address several minor issues and inefficiencies that have been identified since the implementation of the IFQ system.

**Proposed Framework Adjustment 2 Measures**

*Interactive Voice Response System (IVR) Reporting Requirement Removal*

Commercial fishing vessels that land golden tilefish under the IFQ system are currently required to report each trip within 48 hours of landing through our IVR system. The Council

originally created this reporting requirement when the fishery was managed under three permit categories, each with a sector-specific annual landings limit. The IVR system provided timely landing reports to track quota use and allowed managers to close a permit category if the annual landings cap was reached. When the Council changed the management of the fishery to an IFQ system, it retained the IVR system to allow additional monitoring of landings. Improvements in electronic dealer-reported landings and other data streams have rendered this IVR report redundant, and the data are no longer used to monitor quotas. We propose to eliminate this unnecessary reporting requirement.

#### *Recreational Fishing Gear Limit*

In recent years, there have been reports of recreational fishermen using “mini-longline” gear with a large number of hooks to target tilefish. The Council is concerned the use of this gear could result in dead discards if fishermen catch more than the eight-fish per person bag limit using this type of gear setup. The Magnuson-Stevens Act list of authorized gear types at 50 CFR 600.75(v) already restricts the recreational fishery to rod and reel and spear gear. However, to avoid any potential confusion and clarify the amount of gear allowed, the Council has recommended and we propose that rod and reel with a maximum of five hooks per rod should be the only authorized recreational tilefish gear for use in the Mid-Atlantic. Anglers could use either a manual or electric reel.

#### *Commercial Golden Tilefish Landing Condition*

The commercial tilefish fishery typically lands fish in a head-on, gutted condition. However, quotas and possession limits are in whole (round) weight. This requires the fishing industry to use a conversion factor to change landed weight to whole weight to comply with incidental possession limits and IFQ allocations. We proposed to require commercially caught

golden tilefish to be landed with the head and fins attached, although they could be gutted. By requiring this, we can more reliably specify and monitor landing limits and quotas without requiring any conversion. This would simplify catch accounting and improve compliance for individuals participating in the commercial tilefish fishery.

#### *Commercial Golden Tilefish Possession Limit*

When the Council created the tilefish IFQ system, it allocated a separate quota and commercial possession limit of 500 pounds (lb) (227 kilograms (kg)) to allow small landings of tilefish caught by non-IFQ vessels targeting other species. In recent years, there have been increasing reports of non-IFQ vessels specifically targeting golden tilefish to land the maximum commercial incidental possession limit. In an effort to ensure that the incidental fishery functions as originally intended, the Council approved changes to the commercial possession limit to ensure that vessels are targeting species other than golden tilefish. Through this action, we propose to modify the commercial golden tilefish landing limit to 500 lb (227 kg) or 50 percent, by weight, of all fish on board the vessel, whichever is less.

#### *Individual Fishing Quota (IFQ) Authorized Vessels*

Tilefish IFQ allocation holders may authorize one or more vessels to land tilefish under their allocation. All golden tilefish landed by those vessels are then deducted from that allocation. We do not currently have a mechanism for a vessel to attribute golden tilefish landings from a single trip to more than one IFQ allocation. To create such a system would increase reporting burden on vessels and dealers, and add complexity to the IFQ accounting and cost recovery systems. In order to maintain simple and efficient administration of the IFQ fishery, we propose prohibiting a vessel from being authorized to land tilefish under multiple IFQ allocations on the same trip. A vessel could still change IFQ allocations over the course of

the year while only being authorized by one IFQ allocation at a time. In addition, IFQ allocation holders could lease quota to maintain flexibility in harvesting their allocation.

#### *Assumed Discards in Quota-Setting Process*

The current process for setting annual specifications for the golden tilefish fishery deducts assumed discards of golden tilefish from the Annual Catch Target (ACT) to generate the TALs. The incidental sector is then allocated 5 percent of the TAL and the remaining 95 percent of the TAL is divided among the IFQ shareholders based on their individual quota holdings. However, discarding golden tilefish is prohibited in the IFQ fishery. As a result, observed discards are almost entirely from the incidental sector of the fishery. We propose to adjust the specification process to allocate the ACT between the incidental and IFQ sectors of the fishery using the 5- and 95-percent split. Sector-specific assumed discards would then be deducted to establish sector-specific TALs. The IFQ TAL would be allocated to the individual IFQ shareholders. This change would likely result in a lower TAL for the incidental fishery compared to the current system. However, the amount of golden tilefish discards is small and the incidental fishery typically lands 40 to 50 percent of the TAL. Therefore, this proposed change is not expected to negatively impact the incidental fishery.

Pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing Framework 2.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council prepared an analysis of the potential economic impacts of the action, which is included in the draft EA for this action and supplemented by information contained in the preamble of this proposed rule.

For Regulatory Flexibility Act purposes, the NMFS has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as small if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The SBA has established size standards for all other major industry sectors in the U.S., including defining for-hire fishing firms (NAICS code 487210) as small when their receipts are less than \$7.5 million. Using these definitions, during the 2013-2015 period, there are 4 large and 158 small commercial fishing entities that landed golden tilefish, and 210 small recreational for-hire firms that had a tilefish charter/party permit.

During 2013-2015, the 158 small commercial fishing entities had average annual receipts of \$871,966, while their golden tilefish revenues averaged \$35,068. Over the same period, the 210 small recreational for-hire firms had average annual receipts of \$138,380 from all charter/party fishing activity for all species combined. Revenue data were not available by

species, so it is not possible to determine how much is attributable to golden tilefish verses the numerous other fish species those recreational for-hire vessels may target.

The proposed management measures are not expected to change the amount of fishing effort or the spatial and/or temporal distribution of fishing effort in the tilefish fishery. These proposed changes would improve the management of the fishery, but have limited impact on the operation of the fishery. Some of the proposed measures would codify how the fishery already operates, including landing commercial tilefish with the head attached, limiting IFQ vessels to fish for one IFQ allocation at a time, and limiting recreational fishing to rod and reel gear. The proposed change to the incidental commercial possession limit could reduce landings for some vessels.

Analysis of data from 2011-2015 shows that for fishing trips that landed golden tilefish under the incidental possession limit, the tilefish comprised just 0.3 percent of the weight and 0.8 percent of the value of the total landings on those trips. The incidental landings of golden tilefish were approximately 34,000 lb (15,400 kg) worth \$82,000 per year. If this proposed measure had been in place during that time, it would have prevented the landing of approximately 6,000 lb (2,700 kg) of golden tilefish worth \$21,600 per year from trips where golden tilefish was more than 50 percent of the total catch. This reduction would have been spread over 28 fishing vessels that landed those trips, resulting in an average impact of less than \$1,000 per vessel per year. Vessels potentially affected by this proposed measure may be able to offset some of this impact by participating in another fishery.

Given the low number of small entities involved in the tilefish fishery, and the small potential economic impact of the management measures proposed, this action will not have a



“significant economic impact on a substantial number of small entities.” As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule would reduce a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0648-0590. Public reporting burden for the IVR reporting requirement is estimated to average 2 minutes for each IVR response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The proposed change would remove this reporting burden. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 2017.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

§ 648.7 [Amended].

2. In § 648.7, paragraph (a)(2)(ii), is removed and reserved.

3. In § 648.14, paragraphs (u)(2)(vi) and (viii) are revised and paragraph (u)(2)(ix) is added to read as follows:

### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(u) \* \* \*

(2) \* \* \*

(vi) Land or possess golden tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental golden tilefish fishery is closed pursuant to § 648.295(a)(3), unless fishing under a valid tilefish IFQ allocation permit as specified in § 648.294(a), or engaged in recreational fishing.

\* \* \* \* \*

(viii) Land or possess golden or blueline tilefish in or from the Tilefish Management Unit, on a vessel issued a valid commercial tilefish permit under this part, that do not have the head and fins naturally attached to the fish.

(ix) Engage in recreational fishing for golden tilefish with fishing gear that is not compliant with the gear restrictions specified at § 648.296.

4. In § 648.291, paragraph (a) introductory text and paragraph (a)(1) are revised to read as follows:

**§648.291 Tilefish Annual Catch Targets (ACT).**

(a) *Golden tilefish.* The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the individual fishing quota (IFQ) and incidental sectors of the fishery as part of the golden tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *ACT Allocation.* (i) The ACT shall be less than or equal to the ACL.

(ii) The Tilefish Monitoring Committee shall include the fishing mortality associated with the recreational fishery in its ACT recommendations only if this source of mortality has not already been accounted for in the ABC recommended by the SSC.

(iii) The Tilefish Monitoring Committee shall allocate 5 percent of the ACT to the incidental sector of the fishery and the remaining 95 percent to the individual fishing quota (IFQ) sector.

\* \* \* \* \*

5. In § 648.292, paragraphs (a) through (d), are revised to read as follows:

**§ 648.292 Tilefish specifications.**

(a) *Annual specification process.* The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, golden tilefish landings and discards information, and any other relevant available data to determine if the golden tilefish ACL, ACT, or total allowable

landings (TAL) for the IFQ and/or incidental sectors of the fishery require modification to respond to any changes to the golden tilefish stock's biological reference points or to ensure any applicable rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the IFQ and/or incidental TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend golden tilefish ACL, ACTs, and TALs to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate golden tilefish ACL, ACT, TAL, and other management measures for both the IFQ and the incidental sectors of the fishery for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate golden tilefish ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for both the IFQ and the incidental sectors of the fishery, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the *Federal Register* specifying the annual golden tilefish ACL, ACT, TAL and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years for both the IFQ and the incidental sectors of the fishery. After considering public comments, NMFS will publish a final rule in the *Federal Register* to implement the golden tilefish ACL, ACTs, TALs and any management measures. The previous year's specifications will remain effective unless revised through the specification

process and/or the research quota process described in paragraph (a)(5) of this section. NMFS will issue notification in the *Federal Register* if the previous year's specifications will not be changed.

(b) *Total Allowable Landings (TAL)*. (1) The TALs for both the IFQ and the incidental sectors of the fishery for each fishing year will be specified pursuant to paragraph (a)(1) of this section.

(2) The sum of the sector-specific TAL and the estimated sector-specific discards shall be less than or equal to the ACT for that sector of the fishery.

(c) *TAL allocation*. For each fishing year, up to 3 percent of the incidental and IFQ TALs may be set aside for the purpose of funding research. The remaining IFQ TAL will be allocated to the individual IFQ permit holders as described in § 648.294(a).

(d) *Adjustments to the quota*. If the incidental harvest exceeds the incidental TAL for a given fishing year, the incidental trip limit specified at § 648.295(a)(2) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the *Federal Register*.

6. In § 648.293, paragraph (a)(1), is revised to read as follows:

**§648.293 Tilefish accountability measures.**

(a) *Golden tilefish*. (1) *Commercial incidental fishery closure*. See § 648.295(a)(3).

(2) *Commercial ACL overage evaluation*. If the golden tilefish ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the golden tilefish ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by §648.294(f).

7. In § 648.294, paragraph (b)(4), is revised to read as follows:

**§ 648.294 Golden tilefish individual fishing quota (IFQ) program.**

\* \* \* \* \*

(b) \* \* \*

(4) *IFQ Vessel.* (i) All Federal vessel permit numbers listed on the IFQ allocation permit are authorized to possess golden tilefish pursuant to the IFQ allocation permit.

(ii) An IFQ allocation permit holder who wishes to authorize an additional vessel(s) to possess golden tilefish pursuant to the IFQ allocation permit must send written notification to NMFS. This notification must include:

(A) The vessel name and permit number, and

(B) The dates on which the IFQ allocation permit holder desires the vessel to be authorized to land golden tilefish pursuant to the IFQ allocation permit.

(iii) A vessel listed on the IFQ allocation permit is authorized to possess golden tilefish pursuant to the subject permit, until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder to remove the vessel.

(iv) A single vessel may not be listed on more than one IFQ allocation permit at the same time.

(v) A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ golden tilefish.

**§ 648.295 [Amended]**

8. Section 648.295 is amended by:

a. Revising the section heading;

b. Revising paragraphs (a) and (b); and

c. Adding paragraph (c).

The addition and revisions to read as follows:

**§ 648.295 Tilefish commercial trip limits and landing condition.**

(a) *Golden tilefish.* (1) *IFQ landings.* Any golden tilefish landed by a vessel fishing under an IFQ allocation permit as specified at §648.294(a), on a given fishing trip, count as landings under the IFQ allocation permit.

(2) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish vessel permit, as described at §648.4(a)(12), unless the vessel is fishing under a tilefish IFQ allocation permit, is prohibited from possessing more than:

- (i) 500 lb (226.8 kg) of golden tilefish at any time, or
- (ii) 50 percent, by weight, of the total of all species being landed; whichever is less.

(3) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the golden tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental golden tilefish TAL has been landed. The Regional Administrator shall publish a notice in the *Federal Register* notifying vessel and dealer permit holders that, effective upon a specific date, the incidental golden tilefish fishery is closed for the remainder of the fishing year.

(b) *Blueline tilefish.* [Reserved]

(c) *Landing condition.* Commercial golden or blueline tilefish must be landed with head and fins naturally attached, but may be gutted.

9. In § 648.296, the section heading and paragraph (a) are revised to read as follows:

**§648.296 Tilefish recreational possession limits and gear restrictions.**

(a) *Golden Tilefish*. (1) Any person fishing from a vessel that is not fishing under a tilefish commercial vessel permit issued pursuant to §648.4(a)(12), may land up to eight golden tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

(2) Any vessel engaged in recreational fishing may not retain golden tilefish, unless exclusively using rod and reel fishing gear, with a maximum limit of five hooks per rod. Anglers may use either a manual or electric reel.

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